the establishment of the two refineries and the power station. As between Lots 2187 and 826, the former was undoubtedly superior in all respects, yet the same price was paid by the same purchaser for the inferior land purchased a year after the other, at $35,000 per acre.

Fourthly, as between town and agricultural land, conversion of the latter requires payment of a premium of $5,000 per acre. Consequently this advantage of Lot 1685 over Lots 2187 and 826 should be taken into account, as well as the presence of numerous squatters on Lot 826 which would entail further expense for their removal. Lot 1685 had only some piggeries. In comparison with Lots 2187 and 826, Lot 1685 has vastly superior amenities and potentialities. Lot 1685 possesses 950 feet of road frontage; Lot 2187 has less than half that much along a secondary access road only, while Lot 826 has none whatever. Lot 1685, being land facing the sea in a seaside resort, is clearly much more attractive for a housing estate than the others which lack this amenity.

An appeal being a rehearing, this court "has power to draw inferences of fact and give any judgment which ought to have been given or made" — per Lord Wilberforce in *Aik Hoe's* case. The various sales abovementioned are the primary facts from which this court may make legitimate deductions, while reviewing the inferences and conclusions of the High Court. The opinions of the assessors in this case were demonstrably erroneous, because neither of them paid any heed to the sale of Lot 922 and the collector's admission of comparative values. On the evidence generally, having regard to the sufficiency of relevant primary facts available, I do not think that any question of the relative credibility of witnesses can turn the scale.

After careful consideration of all the evidence on the record I am of opinion that the proper market value of Lot 1685 at the relevant date should be $1.10 per square foot. In arriving at this figure I have carefully considered the appellant's own offers. They may be regarded as trial balloons. He probably would have accepted $1 in 1965. A rise of 10 per cent by June 1966 should take sufficient account of improved values over the space of 10 months since August 1965.

Accordingly my award for 179,946 square feet comprised in Lot 1685, at $1.10 per square foot, should be $197,940, together with $5,000 being the value of the house thereon, making a total of $202,940. I will hear counsel as to the question of interest and costs.

Azmi L.P. and Suffian F.J. concurred.

Order accordingly.

Solicitors: *Lee Boon Peng.*

THE "SIMBA"

OWNERS OF "SIMBA" v. ZIM ISRAEL NAVIGATION

[F.C. (Wee Chong Jin C.J., Chua & Winslow JJ.) September 30, 1969]

[Singapore—Federal Court Civil Appeal No. Y 3 of 1969]

Practice and Procedure — Admiralty suit in rem — Whether Admiralty Procedure Rules, 1895, made in pursuance of the Colonial Courts of Admiralty Act, 1890 still apply in Singapore — Whether rules are adequate for purposes of exercising the jurisdiction conferred by s. 4(4) of the Courts (Admiralty Jurisdiction) Ordinance, 1961 — Whether English R.S.C., O. 75 r. 5 should be followed — Setting aside warrant of arrest — Defective affidavit.

Shipping — Arrest of ship — Adequacy of affidavit to lead warrant — Whether Singapore Rules apply.

Courts (Admiralty Jurisdiction) Ordinance, 1961.

Singapore (Consequential Provisions) Order in Council, 1959.

The plaintiffs in an action *in rem* for a claim which fell under section 3(1)(g) or section 3(1)(h) of the Courts (Admiralty Jurisdiction) Ordinance, 1961 took out a writ against the defendants and applied and obtained a warrant for the arrest of the motor vessel "*Simba*". The evidence leading the warrant of arrest complied with rule 16 of the Admiralty Procedure Rules, 1895 in pursuance of the Colonial Courts of Admiralty Act, 1890 which lays down the procedure to be followed and what facts should be disclosed in the evidence.

The defendants moved to set aside the writ and all subsequent proceedings including the warrant of arrest on the ground that the evidence leading the warrant of arrest was bad for non-compliance with Order 75 rule 5 of the Rules of the Supreme Court of England as applied by Preliminary Rule 2 of the Rules of the Supreme Court, 1934 in that (a) the port to which the said vessel belonged was not named and (b) the requirements of the said Order 75 rule 5(8) (a), (b) and (c) had not been complied with and/or the said evidence disclosed no facts upon which the exercise of the jurisdiction conferred upon the court by section 4 of the Courts (Admiralty Jurisdiction) Ordinance, 1961 could be founded.

Prior to the hearing of the motion the vessel had been released upon the defendants furnishing satisfactory security.

At first instance the motion was dismissed with costs. The defendants appealed to the Federal Court.

Held, dismissing the appeal: (1) the Admiralty Procedure Rules, 1895 made in pursuance of the Colonial Courts Admiralty Act, 1890 still applied in Singapore by virtue of section 4 of the Singapore (Consequential Provisions) Order in Council 1959 which provided for the continued application of the existing laws in Singapore immediately before June 3, 1959;

(2) the Admiralty Procedure Rules were adequate for the purpose of the exercise of the existing jurisdiction *in rem* conferred by section 4(4) of the Courts (Admiralty Jurisdiction) Ordinance, 1961;

(3) since the warrant of arrest had complied with the Admiralty Procedure Rules and it was clear from the writ and the warrant of arrest the port to which the vessel in question belonged the appeal must be dismissed with costs.

FEDERAL COURT

A.P. Godwin for the appellants.

K.C. O'Connor for the respondents.

Winslow J. (delivering the judgment of the court): At the conclusion of the hearing on 30th June, 1969 we dismissed this appeal with costs, indicating that we would give our reasons at a later date. We now proceed to do so.

This was an appeal against the decision of Kulasekaram J., dismissing a motion:—

"For an order that the writ of summons and all subsequent proceedings herein including the warrant of arrest be set aside with costs on the grounds following:-

That the affidavit to lead the warrant of arrest is bad for non-compliance with Order 75 rule 5 of the Rules of the Supreme Court of England as applied by Preliminary Rule 2 of the Rules of the Supreme Court in that (a) the port to which the said vessel belongs is not named, and (b) the requirements of the said Order 75 rule 5(8)(a)(b) and (c) have not been complied with and/or the said affidavit discloses no facts upon which the exercise of the jurisdiction conferred upon this Honourable Court by section 4 of the Courts (Admiralty Jurisdiction) Ordinance, 1961, can be founded and that the said vessel *'Simba'* now under arrest herein be released from such arrest and that a direction to release be sent to the Sheriff of Singapore."

This motion came on for hearing on 15th January, 1969 by which time the said vessel had already been released on 23rd December, 1968 upon the defendants furnishing satisfactory security.

The plaintiffs in this case took out a writ against the defendants on 9th December, 1968 and, on the same day, applied for a warrant for the arrest of the motor vessel *"Simba"*. In support of this application, the following affidavit sworn to by Mr. K.A. O'Connor, a partner of the firm of solicitors acting on their behalf, was filed the same day—

"1. I am a partner in the firm of Drew & Napier and have the conduct of this action on behalf of the plaintiffs.

2. I am informed by Messrs. Lillick, McCase, Wheat, Adams and Charles, Attorneys of San Francisco, California, United States of America, and verily believe:—

(a) that the plaintiffs who are a limited company incorporated in Israel, were the charterers of and ownees of cargo laden on board the motor vessel *'Simba'* under a charterparty in Baltime form dated 16th March, 1966;

(b) that during a voyage from ports in Europe to the West Coast of the United States the said cargo sustained damage;

(c) that the plaintiffs have a claim against the said vessel in respect of such damage;

(d) the property to be arrested is the *'Simba'* and the claim has not been satisfied.

3. The aid and process of this Honourable Court are required to enforce payment of the said claim."

It was common ground that the claim in this action falls under either section 3(1)(g) or section 3(1)(h) of the Courts (Admiralty Jurisdiction) Ordinance, 1961 (hereinafter referred to as "the Ordinance") which read as follows:—

"3—(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:—

(g) any claim for loss of or damage to goods carried in a ship;

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship."

It should be observed that this subsection, after listing 18 types of claims including those under paragraphs (g) and (h), concludes with the words, "together with any other jurisdiction connected with ships or aircraft as may be vested in the High Court apart from this section."

The Admiralty jurisdiction of the High Court may be invoked by an action *in rem* against a ship under section 4 (4) of the Ordinance in the circumstances set out in that subsection as follows:—

"4—(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Ordinance, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against:—

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

Prior to 15th January, 1962 when the Ordinance came into operation, the Admiralty jurisdiction of the High Court in Singapore arose by virtue of section 17 (c) of the Courts Ordinance (Cap. 3) which provided it with the jurisdiction and authority of a Colonial Court of Admiralty conferred upon it by the Colonial Courts of Admiralty Act, 1890. That jurisdiction and that authority still exist by virtue of section 8 (2) of the Ordinance, subject to the provisions of the Ordinance.

By virtue of sections 23 and 24 of the Courts of Judicature Act, 1964 the High Court in Singapore was invested with the same jurisdiction as was vested in it by any written law immediately prior to Malaysia day and such jurisdiction includes the jurisdiction and authority in relation to Admiralty matters conferred on the High Court of Justice in England under the United Kingdom Administration of Justice Act, 1956 (hereinafter referred to as "the English Act").

It should be noted that the provisions relating to Admiralty jurisdiction conferred by the English Act had already been substantially incorporated in the Ordinance prior to Malaysia Day.

The important question that arises in relation to the present appeal is whether the rules of procedure contained in Order 75 rule 5 of the Rules of the Supreme Court of England which were, according to the appellants, "tailor-made" to suit the provisions of the English Act should be followed in Singapore or whether the Admiralty Procedure Rules made in pursuance of the Colonial Courts of Admiralty Act, 1890 and approved by Order of Her Majesty in Council in 1895 are still in force in Singapore and, if so, whether they are adequate for the purpose of the exercise of the extended jurisdiction *in rem* conferred by section 4(4) of the Ordinance.

It should be noted that rule 16 of these rules lays down the procedure to be followed and what facts should be disclosed in an affidavit to lead a warrant of arrest such as the one herein and that the affidavit actually filed on 9th December, 1968 did comply with this rule.

If the Admiralty Procedure Rules are not in force in Singapore, that would have been the end of the matter and the appellants would have been bound to succeed. If, however, they still continue to apply in Singapore, the question arises whether they are so inadequate or lacking in procedural requirements as to justify the invocation of Preliminary Rule 2 of the Rules of the Supreme Court in Singapore and thereby to necessitate recourse to Order 75 rule 5 of the Rules of the Supreme Court of England.

The learned trial judge held that there can be little doubt that the Admiralty Procedure Rules are still in force in Singapore. We agree. By virtue of section 4 of the Singapore (Consequential Provisions) Order in Council, 1959 the existing laws which applied in relation to Singapore immediately before 3rd June, 1959 continue to apply, subject to certain adaptations and modifications. The existing laws which so continue to apply include not only those laws enacted by the legislature of Singapore and instruments made thereunder but also Imperial Acts and instruments made thereunder which previously applied in Singapore. The Colonial Courts of Admiralty Act, 1890 and the Admiralty Procedure Rules made thereunder are such laws and these still continue to apply in Singapore notwithstanding subsequent constitutional changes, quite apart from whether or not they continue to do so merely because of section 2 of the Merchant Shipping Ordinance (Cap. 207) as counsel for the respondents contended.

It was contended that the affidavit filed herein should have complied, as it did not, with the requirements of Order 75 rule 5 paragraphs 8(a), (b) and (c) of the Rules of the Supreme Court of England which read as follows:—

> "5—(8) Every affidavit in an action *in rem* brought against a ship by virtue of section 3(4) of the Administration of Justice Act 1956 must state:—
>
> (a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;
>
> (b) that in the belief of the deponent the person who would, apart from section 4 of that Act, be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and
>
> (c) the grounds of the deponent's belief."

In the alternative, it was contended that even if the English Order 75 rule 5 (8) did not apply, the said affidavit was defective in that it disclosed no facts to found the jurisdiction of the High Court *in rem* under section 4(4) of the Ordinance.

The learned trial judge disagreed with these contentions and dismissed the motion of the defendants and we cannot say that he was wrong. As we have pointed out earlier, the important question on this appeal was whether the English Order 75 rule 5 or whether the Admiralty Procedure Rules should be followed. Preliminary Rule 2 of the Singapore Rules provides as follows:—

> "Where no provision for procedure is made or no appropriate form is provided by these Orders and Rules, or by any law in force in Singapore, the procedure and practice and forms for the time being in force or use in the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted."

It should also be noted that Preliminary Rule 4, *inter alia*, provides that subject to the provisions of any statute relating thereto, nothing in the Singapore Rules shall affect the practice and procedure of the High Court prescribed by any statute for the time being in force relating to causes or matters in its Admiralty jurisdiction.

As Mr. O'Connor for the respondents contended one should only look at the English Rules if Preliminary Rule 2 applies and since we have in Singapore a clear provision for the procedure to be adopted in Admiralty causes or matters, there was no necessity to invoke the English Rules. It was also contended by Mr. O'Connor that although the English Act made extensions, it did not effect fundamental changes in the requirements to be complied with before a right to arrest a ship arose.

(2) in this case the contributory cause of the stroke suffered by the plaintiff was furnished by and in the course of the plaintiff's employment and therefore the appellant was entitled to a compensation under the Workmen's Compensation Ordinance and it was within the competence of the court to make an award under section 41 (2) of that Ordinance.

Cases referred to:-

(1) *Harrison* v. *Wythemoor Colliery Co. Ltd.* [1922] 2 K.B. 674, 686.

(2) *Golden Hope Rubber Estate Ltd.* v. *Muniammah & Ors.* [1965] 1 M.L.J. 5.

(3) *Ormond* v. *C.D. Holmes & Co. Ltd.* [1937] 2 All E.R. 795, 801.

(4) *Darling Island Stevedoring & Lighterage Co. Ltd.* v. *Hankinson* (1967), 117 C.L.R. 19, 34; 40 A.L.J.R. 544; [1967] A.L.R. 545.

(5) *Tan Chye Choo* v. *Chong Kew Moi* [1966] 2 M.L.J. 4; [1970] 1 M.L.J. 1, P.C.

FEDERAL COURT.

Atma Singh Gill for the appellant.

N. A. Marjoribanks for the respondents.

Cur. Adv. Vult.

Gill F.J.: The plaintiff-appellant in this case was employed as a bus conductor by the defendants-respondents from 1st April, 1947. At all material times his wages were $8 per day, and his usual hours of work were from 6.30 a.m. to 6 p.m. His duties, apart from selling tickets to passengers, keeping and maintaining records of tickets sold and accounting for the fares collected, were to look after the safety of passengers when boarding or alighting from the bus and to load on to the roof of the bus and unload therefrom passengers' luggage, vegetable baskets and bicycles, etc.

On 10th April 1965 the plaintiff reported for work at Bahau at 8.30 a.m. The bus on which he worked made a trip from Bahau to Seremban. On its return from Seremban it stopped at Kuala Pilah where the plaintiff had to unload some luggage. After it had proceeded towards Bahau and travelled about four miles from Kuala Pilah the plaintiff felt giddy. A little while later the bus stopped to let down some passengers, and the plaintiff had to unload some bags from the bus. At this stage he vomitted but remained seated in the bus. After the bus had moved and gone for a short distance he had a stroke as a result of which he suffered paralysis of the left half of his body.

On 15th June 1967 the plaintiff issued against the defendants a writ which was indorsed with a claim for "damages for personal injuries sustained on 10.4.65 while the plaintiff was employed as a bus conductor and caused by the negligence and breach of statutory duty of the defendants, their servants or agents". On his claim being dismissed by a judgment of Abdul Hamid J. dated 29th January 1969, the plaintiff commenced this appeal from that judgment. Because of his death shortly before the appeal first came up for hearing, it has been prosecuted by his widow Gan Poh.

The basis of the plaintiff's claim for damages on the ground of breach of statutory duty was that he was required to work for more than six days and for more than 48 hours in a week in contravention of sections 58 and 59 respectively of the Employment Ordinance No. 38 of 1955, it being clear that he was a labourer within the meaning of section 2 of the Ordinance read in conjunction with paragraph 2 of the First Schedule thereto.

The defendants by their defence pleaded that the plaintiff was required to undertake two round-trips per day from Bahau to Seremban, that regular rest periods were provided during the trips and that this arrangement had the full cognizance and consent of the Labour Department. They further pleaded that they did not insist on the plaintiff working more than six days in a week, and that on a prior application being made he was allowed to take a day's holiday at times convenient or suitable.

Admittedly, the plaintiff worked for more than six days and 48 hours in a week, but he received payment for working overtime, and he took unpaid leave off and on. As he was paid by the day, it was obviously to his advantage to work as many days in the month as he liked. Counsel for the defendants submitted that there was no breach of any statutory duty on the part of the defendants, as sections 58 and 59 of the Employment Ordinance did not prohibit a labourer from working more than six days or more than 48 hours a week. It is reasonable to assume that working for more than the number of days or hours in a week, as stipulated in the Ordinance, was entirely a voluntary act on the part of the plaintiff. In the circumstances, the learned trial judge was quite right in coming to the conclusion that there was no breach of statutory duty on the part of the employer. His reason for coming to that conclusion, with which I entirely agree, are stated in his judgment as follows: -

"In my view an employer owes no duty to prohibit a labourer if he so elects to work more than six days in a week. It seems to me that section 59(1) of the Employment Ordinance also places no absolute limitation on the part of the labourer to work more than 48 hours in a week and there appears to be no prohibition against an employer to employ a labourer who voluntarily elects to work more than 48 hours a week.

The plaintiff's claim for damages on the ground of negligence at common law was founded on the allegations that both on 9th April and 10th April, 1965 he was obliged to work when he was feeling ill, because his application for leave was refused on the ground that there was no relief conductor available. To put it in other words, his allegation was that he had to work under stress by reason of the defendant's negligence in refusing his application for sick leave, and that it was this stress which brought about the stroke. The defendants by their defence denied the allegations in the plaintiff's statement of claim that the plaintiff applied for leave either on 9th April or 10th April and that there were no relief conductors available.

The plaintiff's evidence in court was that he asked for leave from one Mr. Lee on 9th April, 1965 at about 11 a.m. after he had already started working, but that he did not ask for leave on 10th April, as he was told in the morning that there was no relief conductor available. The evidence of Mr. Lee Khong Boo (D.W. 2) was that the plaintiff did not complain to him on 9th April, 1965 that he had giddiness or headache or was feeling unwell and did not ask for leave, nor did he ask for leave on 10th April, 1965. The judge's